

MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
FEBRUARY 21, 2012
7:00 P.M.

I. CALL TO ORDER

Mayor Hovland called the meeting to order at 7:02 p.m.

II. ROLL CALL

Answering rollcall were Members Bennett, Brindle, Sprague, Swenson and Mayor Hovland.

III. MEETING AGENDA APPROVED

Member Brindle made a motion, seconded by Member Sprague, approving the meeting agenda.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IV. CONSENT AGENDA ADOPTED

Member Swenson made a motion, seconded by Member Sprague, approving the consent agenda as revised to remove Items IV.D., Resolution No. 2012-29 authorizing issuance and sale of \$33,690 EEP special assessment revenue bonds, Series 2012A (taxable), IV.E., Resolution No. 2012-34 supporting the Metropolitan Council's 2012 request for bonding, and IV.H., Resolution No. 2012-35 receiving the feasibility study for Tracy Avenue Roadway Reconstruction Project Improvement No. BA-368, as follows:

IV.A. Approve regular and work session meeting minutes of February 6, 2012

IV.B. Approve correction of regular meeting minutes of January 17, 2012

IV.C. Receive payment of the following claims as shown in detail on the Check Register dated February 9, 2012, and consisting of 29 pages; General Fund \$388,135.84; Communications Fund \$7,466.72; Police Special Revenue \$1,390.00; Working Capital Fund \$46,400.51; Equipment Replacement Fund \$1,533.95; Art Center Fund \$4,061.30; Golf Dome Fund \$1,742.61; Aquatic Center Fund \$33,256.08; Golf Course Fund \$5,247.77; Ice Arena Fund \$16,383.45; Edinborough/Centennial Lakes Fund \$2,430.77; Edinborough Park Fund \$3,920.26; Centennial Lakes Park Fund \$3,197.31; Liquor Fund \$126,078.75; Utility Fund \$409,599.96; Storm Sewer Fund \$27,983.64; PSTF Agency Fund \$11,263.36; Payroll Fund \$4,652.69; TOTAL \$1,094,744.98 and for approval of payment of claims dated February 16, 2012, and consisting of 23 pages; General Fund \$293,440.17; Police Special Revenue \$104.80; Working Capital Fund \$27,232.47; Equipment Replacement Fund \$11,870.37; Art Center Fund \$961.81; Golf Dome Fund \$277.65; Golf Course Fund \$31,562.00; Ice Arena Fund \$2,412.13; Edinborough/Centennial Lakes Fund \$1,446.83; Edinborough Park Fund \$14,084.53; Centennial Lakes Park Fund \$1,002.66; Liquor Fund \$102,831.24; Utility Fund \$62,828.01; Storm Sewer Fund \$2,338.35; Recycling Fund \$39,958.20; PSTF Agency Fund \$12,205.07; Payroll Fund \$3,211.72; TOTAL \$607,768.02; and, Credit Card Transactions dated November 27, 2011 – December 26, 2011; TOTAL \$10,250.15; and, Credit Card Transactions dated December 27, 2011 – January 27, 2012; TOTAL \$10,212.85.

~~IV.D. Resolution No. 2012-29 authorizing issuance and sale of \$33,690 EEP special assessment revenue bonds, Series 2012A (taxable)~~

~~IV.E. Resolution No. 2012-34 supporting the Metropolitan Council's 2012 request for bonding~~

IV.F. Waive Second Reading and Adopt Ordinance No. 2012-04 amending Section 1230.06 tobacco use in City parks

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IV.G. Accept Traffic Safety Report of January 4, 2012

~~IV.H. Resolution No. 2012-35 receiving the feasibility study for Tracy Avenue Roadway Reconstruction Project Improvement No. BA-368~~

IV.I. Request to Purchase, One Ton 4x4 truck chassis – Braemar Golf Course, awarding the bid to the recommended low bidder, Polar Chevrolet at \$24,266.05 plus sales tax.

IV.J. Adopt Resolution No. 2012-36 approving lot division for 4236 Lynn Avenue

IV.K. Approve Hornet’s Nest Working Group – Edina Park Board

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

ITEMS REMOVED FROM THE CONSENT AGENDA

IV.D. RESOLUTION NO. 2012-29 ADOPTED – AUTHORIZING ISSUANCE AND SALE OF \$33,690 EEP SPECIAL ASSESSMENT REVENUE BONDS, SERIES 2012A (TAXABLE)

The Council asked staff to assure, prior to execution, that documentation adequately addressed that the purchase of the bond was conditioned on the loan to Murphy Automotive. **Mayor Hovland introduced and moved adoption of Resolution No. 2012-29, Authorizing Issuance and Sale of \$33,690 EEP Special Assessment Revenue Bonds, Series 2012A (taxable).** Member Swenson seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IV.E. RESOLUTION NO. 2012-34 ADOPTED – SUPPORTING THE METROPOLITAN COUNCIL’S 2012 REQUEST FOR BONDING

Member Sprague introduced and moved adoption of Resolution No. 2012-34, supporting the Metropolitan Council’s 2012 request for bonding, as amended to indicate: “...urge all State legislators to support...” Member Brindle seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IV.H. RESOLUTION NO. 2012-35 ADOPTED – RECEIVING THE FEASIBILITY STUDY FOR TRACY AVENUE ROADWAY RECONSTRUCTION PROJECT IMPROVEMENT NO. BA-368

Manager Neal advised that the feasibility study would be updated to include additional material received including correspondence from the Edina Public Schools. **Member Bennett introduced and moved adoption of Resolution No. 2012-35, receiving the feasibility study for Tracy Avenue Roadway Reconstruction Project Improvement No. BA-368 with inclusion of requested updates.** Member Swenson seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

V. SPECIAL RECOGNITIONS AND PRESENTATIONS

V.A. OFFICER OF THE YEAR

Police Chief Long described the activities sponsored by the Crime Fund and creation of the Officer of the Year Award in recognition of former Police Chief Mike Siitari. He announced the first annual, 2010-11 Mike Siitari Officer of the Year Award recipient was Officer Joel Moore and detailed his extraordinary service on behalf of the City.

Officer Joel Moore thanked the Crime Prevention Fund for sponsoring this award, his partners at Southdale, Officers Jason Behr and Brandon Kuske (his 2009 and 2010 partners), and his family for their support. The City Council and audience responded with a round of applause.

VI. PUBLIC HEARINGS HELD – Affidavits of Notice presented and ordered placed on file.

VI.A. ST. PATRICK’S CATHOLIC CHURCH, TEMPORARY ON-SALE INTOXICATING LIQUOR LICENSE – APPROVED

Police Chief Long presented the request of the Church of St. Patrick’s for a temporary intoxicating liquor license on March 17, 2012, for its “St. Patrick’s Day Celebration” event and recommended approval.

Mayor Hovland opened the public hearing at 7:19 p.m.

Public Testimony

No one appeared to comment.

Member Brindle made a motion, seconded by Member Swenson, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

Member Swenson made a motion, seconded by Member Sprague, to approve issuance of a temporary intoxicating liquor license to the Church of St. Patrick’s on March 17, 2012, for an event entitled “St. Patrick’s Day Celebration.”

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VI.B. COMMUNITY DEVELOPMENT BLOCK GRANT – RESOLUTION NO. 2012-30 ADOPTED

Member Swenson disclosed that she served on the board of Community Action Partnership for Suburban Hennepin (CAPSH), a grant recipient, but derived no payment. Attorney Knutson advised this was not a conflict of interest since Member Swenson was unpaid.

Associate Planner Repya described the Community Development Block Grant (CDBG) Program and recommended allocation of Edina’s 2012 allotment of \$110,285 as follows: Public Services-Senior Community Services (H.O.M.E-Housing and Outdoor Maintenance for the Elderly) of \$9,618; Community Action Partnership for Suburban Hennepin (CAPSH) of \$4,700; and, HomeLine \$2,225 (equaling \$16,543 or 15% of total); and, Community Development-Rehabilitation of Private Property Program of \$41,491; and, West Hennepin Affordable Housing Land Trust (WHAHLT) for its Homes Within Reach Program of \$52,251 (equaling \$93,742 or 85% of total).

The Council acknowledged that Edina received a greater reduction in CDBG allocation than did other cities in Hennepin County. Ms. Repya explained the formula used by Hennepin County was based on census data (population) and poverty/over crowding, with poverty being double weighted.

Mayor Hovland opened the public hearing at 7:31 p.m.

Public Testimony

Kitty Engle, HOME Senior Community Services Program Director, described the services provided to 90 Edina seniors to help them live independently as long as possible and improve the City’s housing stock.

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Paul Birnberg, attorney representing HomeLine, described the tenant advocacy services provided to 100 Edina residents.

Scott Zemke, Community Action Partnership for Suburban Hennepin (CAPSH), reported on the services provided to Edina residents in 2011 and thanked the Council for its past and future support.

Ms. Repya reported that Janet Lindbo, West Hennepin Affordable Housing Land Trust (WHAHLT), was unable to attend tonight's meeting. She described the services provided by WHAHLT to purchase, rehab and resell homes while maintaining ownership of the property to make housing more affordable to qualified buyers. The recommended CDBG funding, along with additional funding, would allow WHAHLT to purchase an eighth home for rehabilitation and resale. It was noted that Hennepin County now administered the home rehabilitation loan/grant program (i.e., new furnaces, windows, basement drain tile repair).

Member Brindle made a motion, seconded by Member Swenson, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

Member Bennett introduced and moved adoption of Resolution No. 2012-30, approving proposed use of 2012 Urban Hennepin County Community Development Block Grant Program Funds and authorizing execution of subrecipient agreement with Hennepin County and any third party agreements. Member Swenson seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

VI.C. MODIFICATION TO THE REDEVELOPMENT PLAN FOR THE SOUTHEAST EDINA REDEVELOPMENT PLAN AND THE PROPOSED MODIFICATION TO THE TAX INCREMENT FINANCING PLAN FOR THE CENTENNIAL LAKES TAX INCREMENT FINANCING DISTRICT (COUNTY NO. 1203) – RESOLUTION NO. 2012-31 ADOPTED

Jessica Cook, Ehlers & Associates representing the City, explained that modification to the Redevelopment Project Area (RPA) and existing Centennial Lakes Tax Increment Financing (TIF) District could provide a funding source for potential redevelopment activities. The Centennial Lakes District currently had cash that was not obligated and since it was operating under older State Statutes, the opportunity existed to use that resource for redevelopment elsewhere in the City. In this case, it was coming forward because modification would accomplish the following: 1) authorize where the tax increment in the district, through 2014, could be spent; 2) restated the budget in the TIF Plan to meet new State reporting criteria; and, 3) the District would expire in 2014 after which time the resource was still available but must be used in accordance with the adopted Plan. Ms. Cook displayed a map depicting the existing project area in the southeast corner of Edina and RPA that would encompass all commercial areas identified in the Comprehensive Plan as "potential areas of change and also all other properties within the area of the City bordered by Morningside Road and Vernon Avenue on the north, Tracy Avenue and Cahill Road on the west, and the City boundaries on the south and east." She indicated concern had been expressed that approval would encourage encroachment of commercial onto residential areas or might not adequately protect healthy residential areas. Ms. Cook explained the recommended configuration would provide the greatest degree of flexibility for the City to expend tax increments; however, the Council could narrow the RPA. She indicated that approval of this modification would not circumvent the normal land use approval

process. It would only authorize the use of tax increments from the Centennial Lakes District to be used for approved activities in the future.

The Council acknowledged that \$12 million had accrued within the Centennial Lakes District which would equal \$23 million when this District expired at end of calendar 2014. Ms. Cook advised that expanding a project area was a common undertaking and many municipalities had created project areas that were contiguous with city boundaries.

The Council asked questions of staff relating to the proposed language, noting the proposed RPA would encompass about 60% of the City's area and include a substantial number of single-family home neighborhoods not found to be blighted or with substandard housing. Ms. Cook explained that documentation language was driven by State Statute requirements and had been endorsed by the City's TIF legal counsel. She also explained the document made general findings that there were areas within this RPA that might benefit from the use of tax increment proceeds or other HRA activities.

Member Bennett noted the document reflected "the property within the RPA," not "some of the property within the RPA," and included many more properties than identified as "potential areas of change" within the Comprehensive Plan. Ms. Cook explained the City's legal counsel had recommended the RPA comprise a contiguous area so it would not raise a "red flag" for the State Auditor, potentially resulting in a time consuming audit. The Council asked whether inclusion of single family properties within the RPA or outside "potential areas of change" would undermine the underlying zoning laws or enhance the City's ability for condemnation. Ms. Cook answered it would not.

Mayor Hovland opened the public hearing at 8:05 p.m.

Public Testimony

John Bohan, 800 Coventry Place, addressed the Council.

Ms. Cook clarified the ways in which Centennial Lakes District tax increment funds could originally be used and the impact of the new legislation to restrict fund use. It was noted these tax increment funds could no longer be used for Centennial Lakes improvements (such as a roof repair/replacement).

Alan Ackerberg, Parasole Restaurants, addressed the Council.

Richard Curtain, property owner at 50th and France, addressed the Council.

Michael Fischer, 4512 Dunham Drive, addressed the Council.

Rachel Hubbard, 50th & France Association, addressed the Council.

Diana Fleetham, 50th & France Association President, addressed the Council.

Janet Bohan, 800 Coventry Place, addressed the Council.

Member Brindle a motion, seconded by Member Swenson, to close the public hearing.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

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The Council and staff addressed issues raised during public testimony. Manager Neal clarified the point was to expand the geographic area in which tax increment could be used.

Member Brindle introduced and moved adoption of Resolution No. 2012-31, adopting a modification to the Southeast Edina Redevelopment Project area and Tax Increment Financing Plan for Centennial Lakes Tax Increment Financing District, Alternative 1. Member Swenson seconded the motion.

Member Sprague made a motion, seconded by Member Brindle, to amend Alternate 1 to include 44th and France and all areas identified as potential areas of change in the Comprehensive Plan.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion to amend carried.

The Council discussed the importance of looking toward the future, retaining Edina’s standing as a leading community, and benefit of taking advantage of an extraordinary opportunity to use \$23 million of accumulated tax increments for redevelopment in other areas. It was noted the proposed RPA (Alternate 1) would provide the greatest flexibility and the City’s residential areas were protected by zoning laws that included a significant public process. The Small Area Plan offered another layer of protection for the City’s residential uses and eminent domain law provided protections as well. Support was expressed to consider a contiguous RPA to reduce the likelihood of triggering a State-initiated audit.

Member Bennett stated she would not object to expanding the RPA to include “all potential areas of change” identified in the Comprehensive Plan (less than 10% of the City’s total area); however, would not support the proposed RPA since it comprised about 60% of the City’s total area and included single-family neighborhoods that were not identified as “potential areas of change” during the Comprehensive Plan public process.

Ayes: Brindle, Sprague, Swenson, Hovland

Nays: Bennett

Motion as amended carried.

VII. COMMUNITY COMMENT

No one appeared to comment.

VIII. REPORTS / RECOMMENDATIONS

VIII.A. MINNESOTA RESTAURANT ASSOCIATION REQUEST REGARDING SALE PRICES EDINA CODE SECTION 900

Dan McElroy, representing the Minnesota Restaurant Association (MRA), presented its request for a Code amendment to provide pricing flexibility and allow “happy hour” discounts. The language would not allow multiple drink discounts, coupons, or barter contests and all other requirements would stay in place.

David Burley, representing Edina Grill, stated his support because their guests had been requesting “happy hour” pricing. He indicated having this flexibility would not impact meeting the 60/40 food to liquor ratio because the offering would be for a short time period on select items. Mr. Burley stated their restaurants in other municipalities experience vibrant business between 3-5 p.m. that Edina Grill does not experience.

Donna Fahs, representing Parasole Restaurant, stated her support and indicated giving some latitude in modest adjustments would be good for business. She noted their restaurants in other municipalities were able to offer drink discounts, their guests expect it, and resent the fact it was not offered in Edina. Ms. Fahs believed having this flexibility would not impact their ability to meet the 60/40 food to liquor ratio.

The Council noted an agenda item tonight would consider a change in the penalty matrix for violating the 60/40 requirement to assure Edina remained a family-friendly restaurant community. It was mentioned that if the MRA's requested amendment was approved, restaurateurs would be able to offer a drink discount, but would not be required to do so. Mr. McElroy concurred that having the ability to offer modest offerings in price would not have a huge impact in meeting the required 60/40 split. He advised that while several municipalities limit late night "happy hour" offerings, Edina was the only municipality in Minnesota to prohibit "happy hour" offerings. The Council discussed the requested amendment and noted that while "happy hour" liquor discounts were restricted, some Edina restaurants offered food discounts that provided a better profit margin. **Member Swenson made a motion, seconded by Member Sprague, referring the request of the Minnesota Restaurant Association regarding an amendment to Edina Code Section 900 to staff for review and recommendation.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

VIII.B. 50TH & FRANCE BUSINESS & PROFESSIONAL ASSOCIATION'S REQUEST TO SELL "VIP" PARKING IN THE 5-0 MALL PARKING LOT DURING THE EDINA ART FAIR

Rachel Hubbard and Diana Fleetham, representing 50th & France Association, presented a request to sell "VIP" parking in the 5-0 Mall parking lot on June 1 to June 3 during the 2012 Edina Art Fair. This request was being made because it was found this parking lot was not a successful location for food vendors.

The Council acknowledged that parking was challenged and asked questions of staff. Attorney Knutson recommended the City and Association enter into a brief agreement to "lease" the parking, at a nominal sum, to the Association. Ms. Hubbard indicated the Association provided proof of liability insurance with the Edina Art Fair application. The Council asked that this information be memorialized to assure clarity and serve as a guide for future considerations. **Member Sprague made a motion, seconded by Member Brindle, approving the request of the 50th & France Business & Professional Association's request to sell "VIP" parking in the 5-0 Mall parking lot from 10 a.m. to 7 p.m. on June 1 and June 2, and from 10 a.m. to 5 p.m. on June 3 during the 2012 Edina Art Fair, subject to execution of lease pursuant to terms as discussed.**

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland
Motion carried.

VIII.C. ORDINANCE NO. 2012-5 ADOPTED – AMENDING SECTION 900 OF EDINA CITY CODE CONCERNING LIQUOR

Mr. Neal presented staff's recommendation to waive first reading and adopt Ordinance No. 2012-05 establishing penalties and enforcement criteria for compliance with the City's liquor licensing standards and requirements, to include a penalty matrix for failure to meet the City's 60/40 food/liquor standard. He described penalties associated with each violation.

The Council discussed the amendment language and asked questions of staff relating to the process followed should it be found a restaurant was not making progress to gain 60/40 food/liquor

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compliance. City Clerk Mangen clarified that if out of compliance, the establishment would receive a 12-month license with the first six months being probationary. In addition there was an associated penalty and if monitoring revealed the restaurant was not moving towards compliance within six months, the Council could consider accelerating to a second violation or revocation. Attorney Knutson advised the ordinance proposed presumptive penalties so it would be the Council's option to impose a penalty, consider revocation, or waive the penalty if close to compliance.

The Council acknowledged restaurateurs had invested millions of dollars in their businesses and the City's goal was to work with restaurant owners to gain compliance. Discussion ensued whether to offer a one-year probationary license to assure adequate time was allowed to progress towards compliance.

The consensus of the Council was to revise the first and second violation for "failure to meet requirement of 60% of gross receipts from sale of food and non-alcoholic beverages" as follows: "...fine; a 12 month probationary license; development of a plan to achieve compliance within one year, with a monitoring visit at six months. ~~where the Council may consider granting an additional six-month period probationary license if staff certify positive progress towards the full compliance goal.~~" And to also eliminate the duplicate violation entitled: "Sale of an alcoholic beverage to a person under the State-established drinking age." **Member Swenson made a motion to grant First and waive Second Reading adopting Ordinance No. 2012-5, amending the Edina City Code concerning liquor as revised above. Member Bennett seconded the motion.**

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VIII.D. RESOLUTION NO. 2001-33 ADOPTED – FINDINGS OF FACT DENYING PRELIMINARY PLAT WITH VARIANCES AT 6109 OAKLAWN AVENUE

Member Swenson introduced and moved adoption of Resolution No. 2012-33, denying a preliminary plat and variances for property at 6109 Oaklawn Avenue in Edina.

Member Bennett seconded the motion.

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VIII.E. PRE-CODIFICATION ORDINANCE AMENDMENTS:

1. ORDINANCE NO. 2012-6 ADOPTED – AMENDING THE EDINA CITY CODE CONCERNING BOARDS AND COMMISSIONS

Assistant Manager Kurt presented the amendment to add the definition of a quorum and clarify that partial terms as chair do not count toward the two-term limit. **Member Sprague made a motion to grant First and waive Second Reading adopting Ordinance No. 2012-6, amending the Edina City Code concerning boards and commissions. Member Brindle seconded the motion.**

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

2. ORDINANCE NO. 2012-7 ADOPTED – AMENDING CHAPTER 4 OF THE EDINA CITY CODE CONCERNING BUILDING, CONSTRUCTION AND SIGNS

Building Official Kirchmann presented amendments to correct outdated references and requirements in the City Code and answered questions of the Council. **Member Swenson made a motion to grant**

First and waive Second Reading adopting Ordinance No. 2012-7, amending Chapter 4 of the Edina City Code concerning buildings, construction and signs. Member Sprague seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

3. ORDINANCE NO. 2012-8 ADOPTED – AMENDING CITY CODE CONCERNING NOISE, VENTILATION AND SWIMMING POOLS

City Sanitarian Engelman presented amendments to update language for consistency with State statutes and rules. **Member Bennett made a motion to grant First and waive Second Reading adopting Ordinance No. 2012-8, amending the Edina City Code concerning noise, ventilation, and swimming pools. Member Brindle seconded the motion.**

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

VIII.F. RESOLUTION NO. 2012-32 ADOPTED – ACCEPTING VARIOUS DONATIONS

Mayor Hovland explained that in order to comply with State Statutes; all donations to the City must be adopted by Resolution and approved by four favorable votes of the Council accepting the donations. **Member Bennett introduced and moved adoption of Resolution No. 2012-32 accepting various donations.** Member Swenson seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Sprague, Swenson, Hovland

Motion carried.

IX. CORRESPONDENCE AND PETITIONS – Mayor Hovland acknowledged the Council’s receipt of various correspondence.

X. MAYOR AND COUNCIL COMMENTS – Received

XI. MANAGER’S COMMENTS – Received

XII. ADJOURNMENT

There being no further business on the Council Agenda, Mayor Hovland declared the meeting adjourned at 10:07 p.m.

Respectfully submitted,

Debra A. Mangen, City Clerk

Minutes approved by Edina City Council, March 6, 2012.

James B. Hovland, Mayor

Video Copy of the February 21, 2012, meeting available.